

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

February 6, 2003

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, February 6, 2003, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Bud Hentzen, Chair; Kerry Coulter, Vice-Chair; Elizabeth Bishop; Bill Johnson; John McKay, Jr.; Jerry Michaelis; Harold Warner; Ray Warren; and David Wells. Don Anderson, James Barfield, Dorman Blake, Frank Garofalo and Ron Marnell were not present. Staff members present were: Dale Miller, Secretary; Donna Goltry, Assistant Secretary; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely Associate Planner; and Rose Simmering, Recording Secretary.

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1. Approval of MAPC meeting minutes of January 9, 2003 and January 23, 2003.

MOTION: That the minutes for January 9, 2003 and January 23, 2003 be approved.

MCKAY moved, **COULTER** seconded the motion, and it carried (9-0).

3. Consideration of Subdivision Committee Recommendations

2-1. SUB2002-132 – Final Plat –GRACE PARK ADDITION, located north of Harry and east of Greenwich Road.

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. An off-site right-of-way dedication shall be submitted connecting Bedford to Lincoln.
- D. **City Engineering** has approved the drainage plan.
- E. Direct access from this site through Windsor Park to the west will be eliminated through the following: 1) the applicant shall construct a hammerhead turnaround for Bedford Ct south of the entrance to the site, 2) the applicant shall construct a circular turnaround for Bedford Ct just south of Lincoln.
- F. **City Fire Department** has requested an emergency access easement from one of the turnarounds. Standard gating and signing are required per **City Fire Department** standards.
- G. The applicant shall guarantee paving improvements of the off-site right-of-way from Lincoln extending along Bedford Ct to the entrance of the subdivision in accordance with **City Engineering**. The applicant shall also guarantee the paving of the proposed interior streets. For the narrow public 32-foot streets, this guarantee shall be for the 29-foot paving standard. The applicant has also agreed to construct a sidewalk along the east side of Bedford Ct from the entrance of the subdivision extending north to Lincoln.
- H. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- I. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- J. The Blocks shall be relabeled as A and B.
- K. 20'x20' gas lease area needs located on plat.
- L. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lot 8, Block A. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width. **The Subdivision Committee has approved the modification.**
- M. **GIS has requested that Bedford Ct be revised to Wilshire Ter.**

- N. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- O. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City.
- P. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- Q. For any lots with existing tree rows that may be impacted by the installation of utilities, it is recommended that 30-ft utility easements be platted in order to allow for the installation of the utilities without damage to such tree rows.
- R. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- S. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- T. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- U. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- V. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- W. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- X. Perimeter closure computations shall be submitted with the final plat tracing.
- Y. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Z. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- AA. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-2. SUB2002-126 – Final portion of overall preliminary Plat – HARVEST RIDGE ADDITION, located on the west side of Maize Road and one the south side of 31st Street South.

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential and allow for the lot sizes being platted. **An annexation request has been submitted.**
- B. This plat will be subject to approval of the associated zone change and any related conditions of such a change. Prior to this plat being considered by MAPC, the zone change will need to be approved.
- C. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. **City Engineering advises that the water line needs to be sized appropriately.**
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the

Planning Department for recording.

- E. **The drainage plan is approved. An off-site drainage easement is needed. A letter from KDOT is requested regarding approval of storm sewer construction.**
- F. **Traffic Engineering has requested a petition for left turn lanes.**
- G. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- J. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- K. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- L. **Hollywood needs to be revised to Westgate for the segment extending from K-42 Drive to the 35th Street intersection.**
- M. **County Surveying** has requested that section corner descriptions be corrected.
- N. For any lots with existing tree rows that may be impacted by the installation of utilities, it is recommended that 30-ft utility easements be platted in order to allow for the installation of the utilities without damage to such tree rows.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy requests additional easements.**
- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-3. SUB2002-144– Final Plat – AVALON PARK ADDITION, located on the north side of 37th Street North and the east side of Tyler Road.

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential and allow for the lot sizes being platted.
- B. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering has approved the drainage plan. An off-site drainage easement is needed. City Stormwater Management advises of a possible need for a FEMA Map Revision in addition to permit approval by DWR and the Corps of Engineers. County Engineering requests the grading of the north roadside ditch to allow stormwater to flow from the railroad tracks to the big slough. An error on discharge from pond 4 needs to be corrected to show 25 CFS, not 18 CFS.**
- E. **Traffic Engineering** has requested left turn lanes on 37th St. North.
- F. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- G. The applicant shall guarantee paved access of 37th St. between the nearest paved segment and the entrance to the subdivision.
- H. It is recommended that Reserve C be extended to the street by narrow strips of Reserve between the lots to increase their accessibility and usefulness for all homeowners in the Addition.
- I. If any of the intended recreational uses for the reserves includes a swimming pool, a site plan shall be submitted with the final plat, for review and approval by the Planning Director. The site plan shall include the information indicated in the Subdivision Regulations. Otherwise a conditional use and public hearing will be needed in the future.
- J. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.

This covenant shall also provide for the Homeowners' Association to maintain the "parking strip" located between this site's south property line and driving surface for 37th St. North.
- K. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- M. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- N. **County Surveying** requests that bearings be denoted on lot lines
- O. The **City Fire Department/GIS** needs to comment on the plat's street names. **New street names are needed.**
- P. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- Q. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage

easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- R. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- S. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- T. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- U. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- V. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- W. Perimeter closure computations shall be submitted with the final plat tracing.
- X. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Y. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Westar Energy requests additional easements.
- Z. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

NEIL STRAHL, Planning Staff presented staff report. Subdivision Committee approved this last week. The applicant is appealing Item (H). It was recommended by Subdivision Committee that Reserve C be extended to the street by narrow strips of Reserve between the lots in two locations to increase its accessibility and usefulness for all homeowners in the Addition. Reserve C has been platted as a land-locked reserve and staff had requested connections from the surrounding streets to the Reserve to allow the use of the reserve by all the residents of the Subdivision. Typically we accomplish this either by pedestrian access easements or by narrow strips of Reserve between the lots. Last week the Subdivision Committee rejected the option of an access easement due to concerns of maintenance, and instead they required extension of narrow strips of the Reserve to the abutting streets. The applicant is here today in opposition to that condition. They are in opposition to the platting of the Reserve strips. Instead of that, they would like to see use of a maintenance easement for access to that Reserve.

WARREN Mr. Chair, Would you prefer to have the position of the Subdivision Committee now, or would you prefer to have that after the applicant speaks?

HENTZEN I think the applicant should speak first.

ROB HARTMAN, P.E.C., agent. What is in question is this Reserve C. This is going to be a lake that is going to be for drainage purposes as well as for the use of the lots that adjoin it, which are Lots 4 through 26. The owner is going to be preparing restrictive covenants that state that the lot owners that adjoin the Reserve will be responsible for maintaining their yards right down to the water's edge. The developer is not wanting to provide public access into the lake in behind these houses. He will have a large lake up here with a recreation center (pointing the area north of the existing plat) and a series of walking paths in this area. And he will have lakes in these other Reserves that will have access from the homeowners lots in the neighborhood. But in this particular case, he would like to have the lots right down to the waters edge. The developer doesn't think that the people buying these lots are going to want people walking in behind their houses and fishing or whatever on the lake. He doesn't want thin strips of land here where this lot owner would maintain his grass, this guy would maintain his grass, and then you have this 10-foot of strip grass in here supposedly be maintained by the Homeowners Assoc. So he would like to provide access to the lake for maintenance purposes only through an access easement here and another access easement over here and eliminate the Reserves in these areas. At the preliminary plat review, planning staff recommended either an access easement or a Reserve to get access to the lake, and the developer is asking that this be with an easement instead of a Reserve. I know Subdivision Committee was concerned that these homeowners (pointing to the other lots not adjoining the Reserve) are going to be paying for the maintenance for the lake and wouldn't have access to it. But part of the lake use is for drainage purposes for the entire development. So that is why the developer feels that the special assessments can be spread on some of these other lots to provide for drainage purposes; because this lake actually will tie into another lake on the north side, here (pointing). There will be a pipe that ties it (the lakes) together through here. It will be benefiting the entire neighborhood from a

drainage-purpose standpoint. It just wouldn't be used for recreational uses. He is going to utilize the area to the north here in the next phase for recreational uses.

MCKAY The property lines are going to go clear to the edge of the lake? You also said that it is going to help with the drainage situation. They are not allowing a drainage easement coming done through there around that lake to have access? I haven't seen a lake yet within a subdivision that didn't have some area somewhere that has a drainage easement.

HARTMAN It has a drainage easement that runs here. The whole Reserve will be designated as a Reserve for drainage purposes.

MCKAY Of that Reserve how much of it is going to be lake?

HARTMAN All of it.

WARREN At the review of this preliminary plat, it appeared to us that Reserve "C" is far more beneficial--for the benefit of those that have lots adjacent to it--than it is as a drainage easement. We gave you a choice that if you are going to assess the cost of that lake across the whole addition, so that everybody gets a cost of maintaining that lake, then they should have access to it. We also gave you the option to modify your homeowners agreement so that the cost of maintaining that lake would be borne by those who have adjacent property to it. Your developer said that he was going to do that, and that is where Subdivision Committee considered the unfairness and inequity of what he was saying. He had an option--either let the people who get to use the lake maintain the lake and isolate the others from the cost or, if you are not going to do that, then open the lake so that they (the other people in the subdivision) can get to it.

HARTMAN The developer feels that they are still getting use of it for the drainage purposes of it.

JOHNSON I voted against the motion at Subdivision Committee hearing last Thursday. My feeling was that we had given him either the option of having an easement or to make it a part of the Reserve. We gave the developer the option on the preliminary plat. Last week, once we made the motion last Thursday, we decided that it needed to be extended through a Reserve. So I voted against it because I felt we changed what we gave him.

WARREN When we declare an access easement here, what we do to the homeowners on both sides is that we deny them the use of the land, even though they own it and they are going to pay taxes on it. We deny them the use but we tell them they have to maintain it. I see a gross inequity in that if they have to leave their fences out-- they have to leave it for people to have egress and ingress through, and they have to mow but they can't use it for anything else--then I am saying that if we are going to do that, we ought to declare that it is a strip of land of which the homeowners association will own, and so that is the question. As far as I was concerned, I thought we had made that provision at the preliminary level. And I understand what you are saying is that we didn't. But in my opinion, it is unfair to provide an access easement that is going to be the responsibility of the guy owning the lot next door to take care of it.

BISHOP My understanding at the preliminary plat stage was that the Subdivision Committee unanimously said that we would like to see access to the Reserve "C" lake for all of the homeowners in the subdivision if they are all going to be paying for it. When the plat came back to us, it still wasn't there and we asked about it and were told that the developer didn't want to do that.

WARREN We couldn't believe that the developer wasn't willing to modify that homeowners agreement in such a manner that would assess the cost of that lake to those lots. We thought that is where the cost ought to be. Whatever that cost would be, we thought it ought to be to those that directly benefit from it.

HENTZEN That lake is dedicated as a Reserve. I think the appraisers that appraise these subdivision consider so much a square foot of the lake, in others words, the owners of the lake is the whole subdivision. That tax (for the lake) is assessed against the entire subdivision not just the ones around the lake.

WARREN It is to the Homeowners Association.

MICHAELIS I am kind of on the same boat as Ray is. This is probably going to be done through specials, as far as the construction of the lake. That is the part that is going to be unfair, because that is going to be a pretty big cost there. And if you take that cost and spread it to all those other homeowners that can't use it, I think that is inequitable. I believe it ought to be paid for, if it going to be used exclusively for those 26 lots, they ought to pay for it.

WARREN I would think there would be a heavy protest if you try to put a special assessment bond together with a benefit district that would be more than those lots touching the reserve. I would have you in court in a minute, because there is lack of benefit to the rest of these people without access.

HENTZEN What did Subdivision recommend?

WARREN That if we could not get the developer to modify his homeowners agreement, then he would be required to put necks from this Reserve out so the public could gain access, and not just a easement. And we said that those two egress/ingress points be a part of Reserve "C". I think the Subdivision Committee and maybe this body would be amiable to modify those requirements of those necks coming out there, if you are willing to modify your homeowners agreement

and not unfairly charge the rest of these people. But if the developer wants to take a stand that he is not going to modify, that then we are going to take this plat with the necks from the Reserve.

MOTION: Approve this request based on the Subdivision recommendation and extend the Reserves so that there would be access to the lake.

MCKAY moved, **COULTER** seconded the motion, and it carried (8-1) **JOHNSON** opposed.

MICHAELIS For clarification—that is to include the two easements in and out of that area so that there would be access to that lake?

MCKAY Yes.

2-4. SUB2002-130— Final Plat – SUBWAY ADDITION, located south of Harry and on the east side of Webb Road.

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering has requested a private storm sewer extension which will be needed at time of site development. The drainage plan is approved.
- D. The plat proposes one access opening along the south property line. The access controls are approved.
- E. A restrictive covenant shall be submitted that permits future cross-lot access with the abutting property owner to the south.
- F. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- G. County Surveying requests that the bearing along the west line of the original tract needs corrected. In addition, a bearing is needed along the west line of Lot 1, Block 1.
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility

easements to be platted on this property.

- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-5. SUB2003-03– One-Step Final Plat – CHAPEL HILL SECOND ADDITION, located on the north side of 13th Street, east of Greenwich Road.

- A. **City Engineering** has requested a respread agreement for special assessments due to the lot reconfiguration, or new petitions if applicable.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording
- C. **City Engineering** has approved the drainage plan.
- D. The plat proposes one joint access opening along 13th St. North. **Traffic Engineering has required complete access control along 13th St. North. Lot 2 will need to obtain access to the internal street through an access easement platted within Lot 1 or Lot 3.**
- E. The access easement shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- F. The Applicant shall guarantee the paving of the proposed streets.
- G. The distance to the northernmost lots is approximately 2400 feet. The Subdivision Regulations limit urban cul-de-sacs to 800 feet in length unless an emergency access easement is proposed. The applicant has proposed a temporary emergency access easement along the east property line, which will be vacated upon the extension of Summerfield to the west. **The Subdivision Committee has not required the emergency access easement.**
- H. The Parks and Pathways Plan has indicated that a recreation corridor should be provided along the north line of this plat. MAPD's Land Use staff recommends a 10-ft pedestrian access connection along the west line of Lot 26, Block 1, extending to the railroad right-of-way to the north. It is anticipated that this right-of-way will be converted into a recreation corridor and such access would benefit residents in this Addition. **The Subdivision Committee has required a contingent pedestrian easement. The plat's text shall state that the access easement shall be contingent upon the conversion of the railroad right-of-way to a public trail use.**
- I. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- J. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- K. The **City Fire Department/GIS** needs to comment on the plat's street names. **Bedford Street shall be eliminated. Summerfield and Crestwood shall extend to Lot 16, Block 1.**
- L. **County Surveying** has requested bearings denoted on lot lines.
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who

acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy requests additional easements.**
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-6. SUB2002-31- One-Step Final Plat – THE FAIRMONT SECOND ADDITION, located on the west side of 127th Street East, north of 21st Street North.

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** has approved the drainage plan.
- D. **Traffic Engineering** has required the alignment of the proposed opening with Camden Chase across 127th St. East.
- E. **Traffic Engineering** requests a guarantee for a left turn lane.
- F. A second point of access from Woodridge to the north is needed by **City Fire Department**. **The applicant shall provide a restrictive covenant that requires an emergency access easement to Woodridge.**
- G. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations which state that the maximum depth of all residential lots shall not exceed 2.5 times the width. **A modification has been approved.**
- H. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development

of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-7. DED2003-01 – Dedication of Street Right-of-Way, for property located on the southwest corner of MacArthur and Hoover Road.

CASE NUMBER: DED 2003-01 -- Dedication of Street Right-of-Way from Billy Gray, Gray Development, Inc., for property located on the southwest corner of MacArthur and Hoover Road.

OWNER/APPLICANT: Billy Gray, Gray Development, Inc., 204 Woodchuck, Wichita, KS 67212

AGENT: Phil Meyer, Baughman Company, P.A., 315 Ellis, Wichita, KS 67211

LEGAL DESCRIPTION: The east ten feet of the south 47.77 feet of Lot 1, Block A, Wheatland Commercial Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of Zoning Case No. ZON 2001-59 for additional street right-of-way along Hoover.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-8. DED2003-02 – Dedication of Access Control, for property located on the northwest corner of 21st Street North and Grove.

CASE NUMBER: DED 2003-02 -- Dedication of Access Control from the City of Wichita - Property Management, for property located on the northwest corner of 21st Street North and Grove.

OWNER/APPLICANT: Property Management, C/O John Philbrick, 455 North Main Street, Wichita, KS 67202

AGENT: Phil Meyer, Baughman Company, P.A., 315 Ellis, Wichita, KS 67211

LEGAL DESCRIPTION: Blocks 1 and 2, Logopedics Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split Case No. SUB 2002-114, and is being dedicated for complete access control along 21st Street North.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-9. DED2003-03 – Dedication of Street Right-of-Way, for property located on the northwest corner of 21st Street North and Grove.

CASE NUMBER: DED 2003-03 -- Dedication of Street Right-of-Way from the City of Wichita - Property Management, for property located on the northwest corner of 21st Street North and Grove.

OWNER/APPLICANT: Property Management, C/O John Philbrick, 455 North Main Street, Wichita, KS 67202

AGENT: Phil Meyer, Baughman Company, P.A., 315 Ellis, Wichita, KS 67211

LEGAL DESCRIPTION: The north 10 feet of the south 20 feet of Blocks 1 and 2, Logopedics Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split Case No. SUB 2002-114, and is being dedicated for additional street right-of-way along 21st Street North.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-10. DED2003-04 – Dedication of Access Control, for property located on the north side of 21st Street North and east of Tyler Road (Tract B).

CASE NUMBER: DED 2003-04 -- Dedication of Access Control from Laham Holding Company, LLC, George E. Laham, II, Managing Partner, and East Pointe Development, LLC, J. Douglas Malone, Manager, for property located on the north side of 21st Street North and east of Tyler Road.

OWNER/APPLICANT: Laham Holding Company, LLC, George E. Laham, II, Managing Partner, and East Point Development, LLC, C/O J. Douglas Malone, Manager, 150 N. Market, Wichita, KS 67202

AGENT: Rob Hartman, PEC, P.A., 303 S. Topeka, Wichita, KS 67202

LEGAL DESCRIPTION: A portion of Lot 1, Block 3, Reflection Ridge Third Addition to Wichita, Sedgwick County, Kansas, described as follows:

TRACT B

Beginning at the northwest corner of said Lot 1; thence S00°20'14" West, along the west line of Lot 1, 271.41 feet to the point of beginning; thence S89°39'46" East 228.82 feet; thence S00°25'32" East 245.52 feet to the south line of Lot 1; thence S89°34'28" West 232.11 feet to the west line of Lot 1; thence N00°20'14" East along the west line 248.58 feet to the point of beginning. Said tract containing 56,934 square feet, or 1.31 acres, more or less.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split Case No. SUB 2002-108, and is being dedicated for access control, except for two openings, along 21st Street North.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-11. DED2003-05 – Dedication of Access Control, for property located on the north side of 21st Street North and east of Tyler Road (Tract A).

CASE NUMBER: DED 2003-05 -- Dedication of Access Control from Via Christi Riverside Medical Center, Inc., Ron Stephen, CEO, for property located on the north side of 21st Street North and east of Tyler Road.

OWNER/APPLICANT: Via Christi Riverside Medical Center, C/O Ron Stephen, CEO, 959 N. Emporia, Ste. 302, Wichita, KS 67214

AGENT: Rob Hartman, PEC, P.A., 303 S. Topeka, Wichita, KS 67202

LEGAL DESCRIPTION: A portion of Lot 1, Block 3, Reflection Ridge Third Addition to Wichita, Sedgwick County, Kansas, described as follows:

TRACT A

Beginning at the southeast corner of Reserve F and said Lot 1; thence N00°25'32" West, 72.08 feet to the point of curvature of a curve to the left, having a radius of 254.48 feet; thence northwesterly along said curve and through a central angel of 27°30'00", an arc length of 122.14 feet to the point of reverse curvature of a curve to the right, having a radius of 561 feet; thence northerly along said curve and through a central angle of 10°30'13", an arc length of 102.85 feet; thence S89°34'28"West, 257.16 feet; thence S00°25'32"E, 284.65 feet to the south line of Lot 1; thence N89°34'28"E, along the south line of said Lot 1 and Reserve F, 324.80 feet to the point of beginning. Said tract containing 86,610 square feet, or 1.99 acres, more or less.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split Case No. SUB 2002-108, and is being dedicated for complete access control, except for one opening, along 21st Street North.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

2-12. DED2003-06 – Dedication of a Utility Easement, for property located east of Hydraulic, north of 47th Street South.

CASE NUMBER: DED 2003-06 -- Dedication of a Utility Easement from L. Jay Gilbert, C/O Mary Hudson, for property located east of Hydraulic, north of 47th Street South.

OWNER/APPLICANT: L. Jay Gilbert, C/O Mary Hudson, 2002 Timbercreek Cr., Wichita, KS 67204

AGENT: Baughman Company, P.A., 355 Ellis, Wichita KS 67211

LEGAL DESCRIPTION: Part of Lot 2, S & G Industrial Addition to Wichita, Sedgwick County, Kansas, described as the east 10 feet of the south 20 feet of the north 27 feet of Lot 2.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB 2002-102 and is being dedicated for construction and maintenance of public utilities.

MOTION: To approve, subject to staff comments and citing the findings in their report.

MICHAELIS moved, **WARREN** seconded the motion, and it carried (9-0).

Item 3-1 may be taken in one motion, unless there are questions or comments.

3-1. VAC2002-44 Request to Vacate Platted Easement

OWNER/APPLICANT: USD 259 c/o Joe Hoover

AGENT: MKEC Engineering Consultants, Inc c/o Jeff Cartwright
Brian Lindebak

LEGAL DESCRIPTION: Portion of the platted easement

LOCATION: Generally located east of Oliver and between 2nd & 3rd Streets North, 328 N Oliver.

REASON FOR REQUEST: Expansion of school building.

CURRENT ZONING:

Subject property and property to the south are zoned B Multifamily Residential and SF-5 Single Family Residential. Property to the east is zoned SF-5 Single Family Residential. Property to the west is zoned TF-3 Duplex Residential. Properties to the north are zoned MF-29 & B Multifamily Residential and TF-3 Duplex Residential.

USD 259, as part of an expansion and improvement project to Robinson Middle School, proposes to build a school building on what is now part of the schoolyard. The building will encroach over a portion of the platted 20-foot sewer easement, as shown on the exhibit. The easement is shown on the Robinson Junior High Addition plat, which was recorded with the Register of Deeds 04-14-1978.

Staff recommends approval of the vacation request noting that any encroachment into the platted setbacks would require a vacation and reserving comment from the private and public utility representatives on the acceptability of this vacation and if any guarantees, substitute easements and/or dedications should be required.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time January 13, 2003, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described platted easements and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the platted floodway described in the petition should be approved subject to the following conditions:

1. Guarantee that the existing sewer line in the vacated easement be abandoned.
2. The platted easement will remain in effect as a temporary easement until the sewer line is abandoned.
3. Dedicate an additional 10-feet to the platted 10-foot easement that is located on the north side of the lot and runs parallel to 3rd Street North.
4. Dedicate a contingent 10-foot utility and sidewalk easement to run on the west side of the lot and parallel to Oliver.
5. Dedicate a 20-foot easement be to protect any relocated or new sewer lines.
6. Verify the existing sewer line and manholes running beneath the existing school buildings is a private line.
7. Any storm drainage or other City utilities in the vacated ease must be covered by a dedicated easement or relocated at the applicant's expense and protected with a dedicated easement.
8. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
9. All improvements shall be according to City Standards.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Guarantee that the existing sewer line in the vacated easement be abandoned.
2. The platted easement will remain in effect as a temporary easement until the sewer line is abandoned.
3. Dedicate an additional 10-feet to the platted 10-foot easement that is located on the north side of the lot and runs parallel to 3rd Street North.
4. Dedicate a contingent 10-foot utility and sidewalk easement to run on the west side of the lot and parallel to Oliver.
5. Dedicate a 20-foot easement be to protect any relocated or new sewer lines

6. Verify the existing sewer line and manholes running beneath the existing school buildings is a private line
7. Any storm drainage or other City utilities in the vacated easement must be covered by a dedicated easement or relocated at the applicant's expense and protected with a dedicated easement.
8. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
9. All improvements shall be according to City Standards.

BILL LONGNECKER, Planning staff presented staff report. I spoke with the agent for this case and the applicant has agreed with the conditions that were presented to the Subdivision Committee and they agree with the conditions that are stated in your staff report that you see now.

MOTION: To approve, subject to staff comments and citing the findings in their report.

WARREN moved, **WARNER** seconded the motion, and it carried (9-0).

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4. **Case No.: ZON2002-66** - Mohammed Agahkhani request a zone change from "SF-5" Single-family Residential to "LI" Limited Industrial on property described as:

A tract in the Northeast Quarter of Section 29, Township 26 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as beginning 1323.75 feet south of the Northeast corner of Lot 1, in said Northeast Quarter; thence South 330.24 feet; thence West parallel to the north line of said Northeast Quarter 1319.62 feet more or less to the west line of the East Half of said Northeast Quarter; thence North 330.24 feet; thence East 1318.5 feet more or less to the point of beginning. Generally located Northwest of the intersection of 43rd Street North and Webb Road.

DEFERRED FROM MAPC ON JANUARY 23, 2003

BACKGROUND: The applicants request a zone change from "SF-5" Single-Family Residential to "LI" Limited Industrial on the approximate 8.5-acre site located southwest of the 45th Street North – Webb Road intersection. The site has frontage on Webb Road. The site is part of approximately 10 unplatted acres, of which the northeast 1.7 acres (465-feet x 160-feet) is zoned "LI". The "LI" property contains a small accessory building. The zoning was granted in 1967 to bring a non-conforming use into compliance. The applicant proposes to develop the subject property, plus the already zoned "LI" 1.7-acres, as an office – manufacturing – warehouse complex for "Ancient Formulas Incorporated", a dietary supplement business.

"SF-5" zoning abuts the site on its south, west and north sides. The Webb Acres Addition and the Sun-Air Estates Addition to the south are developed with single-family homes on 9 lots, ¾ - 1½ acres in size. South of these lots are 3 tracts, zoned "SF-5" each over 4 acres, with houses on two of the lots. The rest of the Sun-Air Estates Addition to the west of the site contains 49 lots, 1 ¼ - 1 ½ acres in size and developed as single family residential. North of the site are 13 tracts, ¾ acres to 10 acres in size, and developed as single family residential. The property to the east is zoned "RR" Rural Residential on the north half and "LI" on the south half. The "RR" zoned property is actively used for agriculture. The "LI" zoned property is the beginning of Jabara Airport.

The Jabara Airport development is the northern edge of an extensive section of land zoned "LI" and developed as an airport, manufacturing, warehouse and office complexes. This development begins on the south side of 43rd Street North, continues south to the 29th Street North – K-96 – Webb Road interchange, goes east to Rock Road south of 37th Street North and east to a point roughly half way between Webb Road and Greenwich. This large, active industrial area is not completely developed.

Since the properties to the north, south, west and east have residential zoning, screening and buffer landscaping will be required around the site. The compatibility setback standards will be required around property line unless a Zoning Adjustment is granted by the Planning Director and Zoning Administrator to reduce or waive the compatibility setback.

CASE HISTORY: The property is not platted. In the mid-1960's this property and the area around it had its zoning changed because of the extension of the 3-mile Wichita area of zoning influence. As a result of this and the subsequent re-zoning of the property to "R-1" Suburban Residential, a boarding kennel on the property became a non-conforming use. The owners of the property applied for a zoning change of "E" Light Industrial from "R-1" for the area containing the kennel: the 465-feet x 160-feet area on the northeast corner of the site. This change to "E" zoning was to bring the kennel area into compliance, while keeping the rest of the property zoned "R-1". The MAPC recommended denial of the request on 1-26-1967. The BOCC approved the request on 2-15-1967.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5"	Large lot single family residential
SOUTH: "SF-5"	Large lot single family residential
EAST: "RR" & "LI"	Agricultural & Jabara Airport
WEST: "SF-5"	Large lot single family residential

PUBLIC SERVICES: The site has frontage along Webb Road, a paved 2-lane arterial at this location. Public sewer service is not available and will have to be extended to the property. The Department of Environmental Health does not approve of on site sewage systems in industrial zoning districts. Public Water is available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The Comprehensive Plan recommends that "Low Density Residential" development be located away from adverse surrounding land uses, such as major industrial and commercial areas. The site is abutted on its west, north and south sides by large lot single-family residential development, which is conformance to the Comprehensive Plan and likely to remain single-family residential. The industrial zoning and development to the east is across Webb Road and is likely to remain the Jabara Airport's landing and take-off area/air-strips.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be DENIED. The Comprehensive Plan does not indicate that an expansion of a small, 17-acre, isolated area zoned "LI" would be appropriate for this area, which is recommended for low-density residential. The 1.7-acre site was to bring a pre-existing use into compliance; that use is no longer on the site and it would be an example of "spot" zoning to expand the existing "LI" zoning. "Spot" zoning singles out a parcel of land for special treatment or privileges not in harmony with the other use classifications in the area and without any apparent circumstances that call for different treatment. "Spot" zoning also departs from the Comprehensive Plan.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is abutted by large lot single-family residential development on its north, south and west sides. There is more single-family residential development west of the area and undeveloped "RR" and developed "SF-5" zoning north of the site. All industrial zoning is either approximately ¼ mile south of the site, or southeast of the site and on the east side of Webb Road. The exception is the 1.7-acre section of the 10-acre site that was zoned in 1967 to bring a kennel (that was there prior to the re-zoning in the mid-1960's) into conformance. The immediate area is overwhelmingly residential.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single-Family Residential and developed residential. The site's best use is residential. The kennel on the site is gone and so is the reason for the 1967 light industrial zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The zoning change request is totally out of character with the area. An expansion of the existing 1.7-acre "LI" zoning would allow uses that should be located away from residential development. The requested change would thrust an isolated spot of zoning that would allow some of the least restricted activities into an area that is the under zoning subject to the most restrictive
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for low-density residential development. The request for the "LI" zoning change on the remaining 8.5 acres of the site would introduce uses that should be (but wouldn't be) separated from the existing residential development by open space, water spaces or abrupt changes in topography. The request amounts to an expansion of spot zoning.
4. Impact of the proposed development on community facilities: Impact would be significant. There is no water or sewer available on the site and it would have to be extended to the site. The traffic would go from what is generated by a large single-family lot to a manufacturing facility. This would mean an increase in automobile traffic, as represented by the employees of the proposed business and introduce truck traffic that is not characteristic of low-density residential zoning and development.

If, however, the Planning Commission believes this is an appropriate use, staff recommends approval subject to a platting within a year and a Protective Overlay, to minimize the effect of the proposed "LI" zoning.

(1) The following uses shall not be permitted:

- (a) Adult entertainment; microbrewery; liquor store; nightclub; tavern and drinking establishment; multi-game, casino-style gambling facility; pawnshop; tattooing and body piercing.
- (b) Group residence, limited and general; correctional placement residence, limited and general; correctional facility; day reporting center and drug & alcohol rehabilitation center; Group home, commercial, limited and general; funeral home; personal care service; personal improvement service
- (c) Asphalt or concrete plant, limited and general; mining or quarrying; oil or gas drilling; rock crushing; solid waste incinerator; gas and fuel storage and sales; wrecking or salvage yard; recycling process center; recycling station private and public; manufacturing general; transfer station; welding or machine shop; agricultural processing and landfill.

- (d) Vehicle and equipment sales, outdoors; car wash; vehicle repair, limited and general; vehicle storage yard; billboards; wireless communication facility; second hand store; construction sales and service; convenience store; hotel - motel; nurseries and garden center; printing and coping, general and limited; recreation & entertainment, indoor and outdoor; fast food restaurant and restaurant; service station; bank or financial institution; broadcast radio station; funeral home; medical service; hospital; retail general; wholesale or business service; and outdoor storage and self-storage
 - (e) Animal care limited and general and kennel hobby, boarding, breeding and training.
- (2) Compatibility setback standards shall be implemented as well as screening and landscape buffering, per the Unified Zoning Code and the Landscape Code.
 - (3) No outdoor work, outdoor storage or outdoor display shall be permitted.
 - (4) All buildings shall be designed and built of materials that compliment the residential character of the single-family residential area.
 - (5) No outside amplification systems
 - (6) All outside lighting shall be directed onto the site and be no taller than 15-feet.
 - (7) No structure shall be higher than 35-feet.
 - (8) Private on site sewage system would have to be approved by Environmental Health. A restrictive covenant would be required limiting disposal of waste. No hazardous material or waste would be allowed to be disposed of on site.

BILL LONGNECKER, Planning Staff. The applicant has asked for a deferral, and that this public hearing be deferred until March 6. The applicant brought in more material to be reviewed, and because of the late date that planning staff received them, staff felt we needed the time to look at these new materials. So we thought the deferral was a reasonable request.

HENTZEN The District Advisory Board will hear this request prior to our hearing?

LONGNECKER Yes, D.A.B. It will consider this case on March 3, 2003.

HENTZEN The new items will be available to them?

BISHOP The D.A.B. did not hear the request on February 3, 2003? There was also a deferral from the D.A.B.?

LONGNECKER That is correct.

MOTION: To defer until March 6, 2003.

MICHAELIS moved, **BISHOP** seconded the motion, and it carried (9-0).

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- 5. Public request for an amendment of the Unified Zoning Code pertaining to a dental laboratory as a home occupation, Rebecca Threadgill has requested an opportunity to address the MAPC.

DATE: January 16, 2003

TO: Metropolitan Area Planning Commission
FROM: Scott Knebel, Senior Planner, Current Plans
SUBJECT: Public request for an amendment of the Unified Zoning Code pertaining to a dental laboratory as a home occupation

Rebecca Threadgill has requested an opportunity to address the Metropolitan Area Planning Commission (MAPC) at the February 6, 2003 hearing. Mrs. Threadgill submitted the attached letter requesting an amendment of the Unified Zoning Code (UZC) to permit a dental laboratory for the manufacture of crowns, bridges, dentures, and orthodontic pieces as a home occupation.

The UZC regulations pertaining to home occupations are attached. Section IV -E.5.i. permits the Zoning Administrator to allow a home occupation that is similar to those expressly permitted; however, this section specifically states that medical services other than medical or dental offices cannot be permitted as a home occupation. Since a dental laboratory is a medical service, a dental laboratory is expressly prohibited by the UZC as a home occupation.

If the MAPC determines that an amendment of the UZC to permit a dental laboratory as a home occupation is warranted, planning staff recommends that the MAPC direct staff to research the issue, prepare a proposed UZC amendment, and schedule the amendment for a public hearing before the MAPC at a future hearing.

SCOTT KNEBEL Planning staff presented staff report.

WARREN Scott, you are suggesting that in the Zoning Code Section IV -E.5.b., that we do talk about this like it is what small appliance requires...cabinet making. I think what you are going to ask is could we maybe consider it in that bracket? Is that what you are going to ask us?

KNEBEL There are several ways that you could go about amending the Zoning Code. You could specifically amend the Zoning Code to add a dental laboratory as a specifically permitted home occupation use. Or, you could just remove the prohibition on any medical service other than a medical or dental office, which would then allow the Zoning Administrator, if he determines that the use was similar in character to one of the ones above, to allow it as a home occupation. That might be a little more flexible. Because, here is this particular couple who runs a dental laboratory. Somebody else may run some other type of laboratory. And if you just say dental laboratory or medical laboratory, you might not feel all dental laboratories or medical laboratories are created equal. There are probably some that you wouldn't want to be permitted home occupations.

WARREN Not to call it a medical services, but to call it like it is under IV -E.5.b? Then we wouldn't have any problem.

KNEBEL That would be another option. You could say the manufacturer of crowns or other dental pieces.

WARREN I don't mind hearing this, folks, but I really don't think we have a problem.

MCKAY Mr. Warren, what you are saying is to amend up in IV -E.5.b., and add this language in 5.b, is that what you're saying?

WARREN We could help the staff make a declaration that whereas they are looking at medical service, we could say, in our opinion, is that it is not a medical service and would in fact, because they could say as determined by the Zoning Administrator, to be a similar in character to those listed above. And I think that we can say that what they are doing is very similar in character to what is listed in IV -E.5.b.

MCKAY Add the medical portion in IV -E.5.b.

WARREN We could do it, but that would take an amendment to the Unified Zoning Code.

KNEBEL Mr. and Mrs. Threadgill have contacted the Sedgwick County Zoning Administrator, who has already interpreted that this use is a medical service. The appropriate procedure for them would be to appeal that interpretation to the County Board of Zoning Appeals, which would be the only body that is authorized under State law to modify or override an interpretation of the Zoning Administrator.

HENTZEN Item (i) talks about the Zoning Administrator can find it to be in character of those listed above. Apparently those listed above can be a home occupation. So we are talking about (d) Office facilities for architects, engineers, lawyers, doctors, dentist, and members of similar professions. Now you go down and (i) says that none of the following uses shall be deemed to be similar in character: I-(7)--I think that is trying to knock out or say they can't be permitted medical services.

KNEBEL You could not permit any medical service other than a medical or dental office as a home occupation.

HENTZEN Will, then, medical or dental offices be permitted under (7)?

KNEBEL They are specifically permitted above under (d).

HENTZEN Isn't it already permitted above; it says medical services other than medical or dental offices. It doesn't exclude dental offices.

KNEBEL The applicants don't operate a dental office.

HENTZEN I know that, and if that is the trouble--is that the Zoning Administrator has when you read "dental offices"--I don't know of anybody that would think of the little grinding of teeth that they do to make the stuff they make--that it is not a dental office.

KNEBEL That is the reason that we are here. Because, it has been decided by the Zoning Administrator that the use that they have is not a dental office, and could not be permitted as a home occupation--because it says that only medical or dental offices--are the only two medical services that can be permitted as a home occupation.

WARREN What he further assumed, though, in making that assumption, is that they are a medical service.

KNEBEL If you read the definition of medical service, it does say medical laboratories are a medical service.

WARREN What if he worked on crutches? Is that a medical services? I think that would be more of a manufacturing service. I think where we are hung up is, where some Administrator is calling this a medical services and I would call it more of a manufacturing service.

KNEBEL Certainly, one option that the Threadgills would have would be to appeal the interpretation of the Zoning Administrator to the County Board of Zoning Appeals and have that Board make a different interpretation.

WARREN If we were to make some kind of amendment to this ordinance, would that not take us through the process of a amendment? We can't just do it right?

KNEBEL You would have to have a public hearing, advertise.

WARREN We could question that Zoning Administrator's basis of interpretation?

KNEBEL You could, and you could appeal the Zoning Administrator's decision to the County Board of Zoning Appeals if you wanted to.

WARREN Sounds good to me.

WARNER Could we allow them a Conditional Use?

BISHOP I am trying to get a fix on what our options are here. It appears that under I(7), what the Threadgills propose to use their home for is not allowed, according to the Zoning Code. So it is not possible for us to grant them a waiver, and then look at, perhaps, making a amendment to the Zoning Code at the point that we redo the Comprehensive Plan and package together some amendments to the Code and so forth?

KNEBEL You are correct. There is not any legal mechanism for the Planning Commission to grant a waiver from the Zoning Code. Only the Board of Zoning Appeals can do that.

WARNER Why is this here then?

KNEBEL It was our opinion that this Item (7) best option is to remove the Item (7) from the Zoning Code and only the Planning Commission can amend the Zoning Code.

WARREN If we would say that this is probably what we would like to do, but it is probably going to come along with some other changes, don't we redo these annually?

KNEBEL Yes.

WARREN So we would probably wait for the annual review. And in the meantime could we not advise the code inspector that this is our intent, and let this go until we get to that point?

KNEBEL You could try that, and you certainly could advise the Zoning Administrator of that. But I am not going to speak for what he would do with it, if you did.

HENTZEN We'll do it and see what he thinks.

MILLER I just got off the phone with Glen Wiltse, because I wanted see that if, in fact, it was the consensus of the Commission, to basically provide some advise to him, whether he would think that was appropriate and that he would reconsider his opinion. And his answer is that he would need to get with County Law and have them review it, because this has not been the typical procedure that we have had for these sorts of things. Typically, if an applicant had an issue with his interpretation, then they should have filed an appeal to the County BZA and let them decide it. I thought it was worth a call to him and see, since it is kind of a 50/50 thing whether that would make a difference. But he said that he would have to talk with County Law. And so, I guess you guys can do whatever you think is the appropriate thing to do and we will go from there.

HENTZEN What time of the year will this review be made?

MILLER We could have it back on the next Agenda so it would be two weeks. The amendment would take awhile. We have to write it up and do a legal notice. All that, I would say, would take 60 to 90 days.

WARREN Isn't there a legislative requirement to review our ordinance once a year?

MILLER No, you review the Comprehensive Plan once a year.

HENTZEN Normally what time of the year is that?

MILLER There is no schedule we just do it as we get enough Items together to make it worthwhile. Or if there is something really burning, we do it then.

BISHOP Do we have a file accumulating?

MILLER Yes, but the problem is that we have a limited number of people and we are already doing the County Sign Code, and we are involved in a number of other time crunch things that are eating up a lot of time in terms of staff. We need to get those done first before we jump into amending the Code, in my opinion.

WARNER It looks to be like we do have a process available for these people to handle this by going through the BZA. That is the way that things work. We don't have the authority to do anything. We can change the Zoning Code, but that is going to take 90 days. Why don't we recommend that they follow the system and try to get what they want from the BZA?

KNEBEL The main reason that we did not advise the Threadgill's to go the route of the BZA is because when you read the Code, it is pretty crystal clear that a dental laboratory is a medical service. It specifically states that, and the chances of the Board of Zoning Appeals saying that something that is written in black-and-white, on paper, doesn't actually say what it says, are pretty slim. So it is a waste of time on their part.

WARNER But it is not black-and-white when you bring it to the Planning Commission?

KNEBEL We are asking the Planning Commission to amend the Code to specifically allow something that is specifically not allowed. You have the authority to start the process of amending the Zoning Code by establishing a public hearing date. that would then be advertised as a public hearing. Then you would ask if there are any public comments on it. And then, you could recommend to the governing bodies to amend the Zoning Code to remove this Item (7), or something similar to that.

WARNER Would an ambulance service be a medical service?

KNEBEL An ambulance service would probably be consider what is defined as a safety service I would have to look it up.

WARNER I am trying to think of some medical services that you wouldn't want next door to you. I don't think what they have is any problem at all, but there maybe some.

KNEBEL That is why I am suggesting that perhaps you don't add to one of the Items that a medical or dental laboratory be an expressly permitted use, but you just remove the expressed prohibition on the Zoning Administrator determining that a specific dental laboratory with specific characteristics is similar in character to one of the items that is permitted. Because, obviously some dental laboratories it could be a dental laboratory or medical laboratory on a much larger scale then what this couple operates.

WARREN So what you are suggesting I think is in (I) where you say Uses determined by the Zoning Administrator to be similar in character to those listed above, including a dental laboratory is that what you are saying?

KNEBEL No. Then you just remove that Item 7, which says to the Zoning Administrator that medical services other than medical or dental offices cannot be considered similar in character to the ones above, which then allows the Zoning Administrator that option in cases.

WARREN I would like to ask the Chairman to take a straw vote of this group write now as to whether or not there is support for an amendment to this Ordinance. I guess the reason I would hate to make a motion to amend it is that I am not sure what kind of time frame that puts on the Department heads. I don't think we ought to make this a top priority with a lot of expense. I think we ought to couple it with some other things that might be want to be looked at in that ordinance.

KNEBEL We might ask the Threadgills their time frame on something like this. Perhaps they are willing to wait until there are a bunch of other amendments, and it can just be included in that. But then the staff would have the direction that this is specifically an amendment that the Planning Commission would like to include.

TIM AND REBECCA THREADGILL, 3734 N. Arkansas, Wichita, KS 67204.

TIM THREADGILL We are in no hurry. We wanted to move the lab to the house. We are a real small laboratory. But at times we get loaded down and a lot of times it is 10 or 12 hours a day. If we were at the house, it would help us.

REBECCA THREADGILL We don't have a time frame. I understand that this is something that doesn't need to be decided right now.

BISHOP I understand what a dental lab is and what you are talking about. One concern is that the term laboratory brings up something about chemicals and the storage of chemicals in a residential setting.

REBECCA THREADGILL Some actual medical services might have chemicals, but in the dental lab, we don't have all those chemicals. We have normal household cleaners.

HENTZEN When you say time frame is not all that tight-we are probably going to hear other changes in about six months. Is that ok?

REBECCA THREADGILL That is fine.

WARREN In your written comments, you said that you would probably not have over one other employee. Typically with your experience in this can a dental lab operate with three people?

REBECCA THREADGILL We have been operating 10 years with the two of us.

WARREN So if this ordinance contained some wording limiting it to the owner and two employees that would be typical?

REBECCA THREADGILL That would not be a problem.

TIM THREADGILL We have both worked in large labs of about 100 people, but that is not what we are.

REBECCA THREADGILL You can operate a dental lab with one person.

MOTION: that we instruct staff to make provision to allow dental labs as a home occupation provided said labs would not have over the owner and two employees and that said modification to the Zoning Ordinance be done in a timely manner but to be done along with other amendments that may be appropriate.

WARREN moved, **JOHNSON** seconded the motion.

BISHOP The ordinance says one employee.

WARREN The ordinance is pretty on clear.

MILLER I would suggest that the Code says how many employees they can have, and if you left that part off, that would give us direction to work on this particular thing.

WARREN I don't have a problem leaving that off.

AMENDED MOTION: That we instruct staff to make provision to allow dental labs as a home occupation and that said modification to the Zoning Ordinance be done in a timely manner but to be done along with other amendments that me be appropriate.

WARREN moved, **JOHNSON** seconded the motion.

JOHNSON I would like to say that as unclear as this is in this ordinance, if I was an applicant trying to do this, I am not sure that I would not put the heat on the Board of Zoning Appeals to make a decision, when it calls out, and see if I could get what I wanted to get done.

WARNER Does the County BZA have the latitude to make a decision like this?

MILLER The decision that they would be doing it would be an appeal of the administrator's opinion that their use doesn't fall into what is allowed. So they would be evaluating what the Zoning Administrator's opinion was about how this didn't fit in with the uses listed above. And if they didn't agree with that opinion, then they could overturn it and grant them the interpretation that the Code would allow it (as a home occupation). What Scott is saying is that if you put forth that argument, it is going to be hard to prove. But there is a process to allow you to go that direction.

WARNER I don't know if the BZA rules have changed, but years ago when I went through them, they could do about whatever they want.

MILLER They can vary the standards within the Zoning Code, given that they can make the five findings that they must make.

KNEBEL They cannot grant a use variance and allow an otherwise not permitted use.

BISHOP I would like to say I have a little concern about just totally taking out I(7) because I think that might possibly be hitting a very small nail with a sledge hammer.

MOTION carried 9-0.

MILLER We will look at the entire home occupation language and make sure that it is updated to the way a modern zoning code would look at some of these uses.

WARNER Do we need to give these people some kind of time frame?

MILLER Yes, sometime in the summer.

WARREN In the meantime I hope we can advise the Zoning Administrator of our action.

JOHNSON Again, if I was the applicant I would go and push that issue.

The Metropolitan Area Planning Department informally adjourned at 2:26 p.m.

State of Kansas)
Sedgwick County) ss

I, Dale Miller, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2003.

Dale Miller, Secretary
Wichita-Sedgwick County
Metropolitan Area Planning Commission

(SEAL)